



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Ms. Julie Pachares
Assistant City Attorney
The City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR94-009

Dear Ms. Pachares:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.¹). Your request was assigned ID# 23304.

The City of Midland (the "city") received an open records request for "an agreement between the city and the Soccer Association." The city contends the information may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code (former section 3(a)(3), V.T.C.S. article 6252-17a).

The city claims that there is reasonably anticipated litigation against the city by the parents of a deceased minor boy who was killed when a soccer goal fell on top of him while he was swinging on it. The city was served with notice for a claim by the parents' attorney, and they have threatened to sue the city once the claim was denied. The city submitted the responsive documents for our review plus other related information.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have made the requisite showing that the requested information relates to

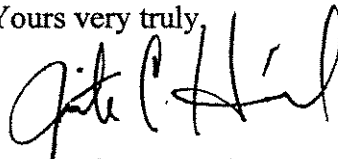
¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

reasonably anticipated litigation for purposes of section 552.103(a). The requested agreement document may therefore be withheld.²

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) (former section 3(a)(3)) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Juanita C. Hernandez
Special Assistant Attorney General
Open Government Section

JCH/rho

Ref.: ID# 23304

Enclosures: Submitted documents

cc: Mr. Randy Talkington
Adjuster
Lindsey Morden Claim Service, Inc.
P.O. Box 2069
Odessa, Texas 79760
(w/o enclosures)

²We have also reviewed the other information submitted by the city and although apparently related to the soccer goal incident, we make no ruling on it since there is no pending open records request for this information. We do note that in the future, any information submitted for our review should not be redacted in any manner.